

NANCEE GRINSTEAD
Claimant

U.S.D. 501

Respondent
Self-Insured

ORDER

APPEARANCES

RECORD AND STIPULATIONS

The Appeals Board has adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge (ALJ) denied claimant's request for workers compensation benefits. The ALJ found claimant had suffered a personal injury by accident on May 8, 1998. But the ALJ concluded that the personal injury by accident did not arise out of and in the course of her employment with respondent because it occurred while claimant was on her way to work and it did not occur on the employer's premises.

On appeal, claimant contends that, although her injury occurred on her way to work, the accidental injury is compensable because it occurred on the employer's premises, although not owned by the employer, the premises were under the control of the employer.

Conversely, the respondent requests the Appeals Board (Board) to affirm the Award. Respondent argues that claimant's personal injury by accident did not arise out of and in the course of her employment because it occurred while she was on her way to work and not on the employer's premises.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs and the parties' arguments, the Board makes the following findings and conclusions:

The Board finds the Award should be affirmed. The ALJ's findings and conclusions, as expressed in the Award, are accurate and supported by the law and the facts contained in the record. It is not necessary to repeat those findings and conclusions in this Order. The Board approves those findings and conclusions and adopts them as its own.

In particular, the Board finds claimant, on May 8, 1998, was on her way to work for the respondent at French Middle School where she was employed as a paraprofessional. Claimant parked her car on a street adjacent to 33rd street which is where French Middle School is located. Claimant then walked south across 33rd street and as she was stepping on the curb, she lost her balance and fell forward. Claimant fell on two cans of pop she was carrying causing injuries to her chest, low back and left shoulder. The street curb that caused claimant to trip and fall is public property maintained by the City of Topeka. The French Middle School property line does not start for approximately eleven and one half feet south of the curb. This eleven and one-half feet of property consists of a grassy area and a sidewalk which is also public property but is maintained by the respondent.

On the date of the accident, claimant was employed by the respondent. Thus, respondent is liable to pay compensation in accordance with the provisions of the Workers Compensation Act for personal injuries that arise out of and in the course of the employment.¹ But a personal injury by accident does not arise out of and in course of the employment when the injury occurs while the employee is on the way to work or after leaving work, and the proximate cause of such injury is not due to the employer's negligence.²

One of the exceptions to this "going and coming" rule is if the personal injury by

¹ See K.S.A.1997 Supp.44-501(a).

² See K.S.A.1997 Supp.44-508(f)

accident occurs on the employer's premises.³ The Kansas appellate courts have narrowly construed the employer's premises as "a place controlled by the employer or a place where an employee may reasonably be during the time he or she is doing what a person so employed may reasonably do during or while the employment is in progress."⁴ Here, the ALJ found and the Board agrees, claimant's injuries were caused by claimant tripping on the street curb, which was not part of the employer's premises. Therefore, the Board concludes, as did the ALJ, that claimant's accidental injury did not arise out of or in the course of her employment with respondent.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that ALJ Brad E. Avery's October 6, 2000, Award that denied claimant's request for workers compensation benefits, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

This _____ day of August 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Paul D. Post, Topeka, Kansas
Gregory J. Bien, Topeka, Kansas
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

³ See also K.S.A.1997 Supp.44-508(f).

⁴ See Thompson v. Law Offices of Alan Joseph, 256 Kan. 36, 39, 833 P.2d 768 (1994).